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The Effects of a Powerful Military on Compliance with International Human Rights
Tribunals

By
Ian Sheppard

Under the mentorship of Dr. Maureen Stobb

Abstract

Are states with a powerful military force less likely to comply with European Court of Human Rights (ECtHR) and Inter-American Court of Human Rights (IACtHR) judgements and rulings? The main foundation of the paper is built upon Hillebrecht's definition of compliance and why a particular state complies with the rulings of the ECtHR and IACtHR. Domestic institutions are the driving force behind a state's willingness to comply because of the significant lack of enforcing power behind these international institutions. The goal of the paper is to expand upon what Hillebrecht started by looking past the basic domestic institutions like executive branch power, an independent judiciary, and a prosperous civil society and, instead, look at the military power of states. By focusing on the military might of states, I argue that this coincides with the Realist theory approach to International Relations (IR) where states are in a constant power struggle in international relations. I also draw on the rational functionalist approach to IR. I utilize both Hillebrecht's Compliance with Human Rights Tribunals (CHRT) dataset and the National Material Capabilities v5.0 (NMC) dataset to gather state compliance under the two tribunals as well as a strong definition for what a powerful military is. The implications of this study could be the expansion of the IR literature as a whole by adding a completely different approach to studying noncompliance and the power of states while also providing possible policy implications for noncompliance.

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May 2020
Political Science and International Studies
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Acknowledgements

I would like to thank Dr. Stobb for being the best mentor I could ask for. I truly appreciate the guidance, knowledge, and patience you have offered me these last few years. I would also like to thank my girlfriend, Chandra, for being my biggest supporter and always being there for me during this arduous process. Finally, I would not be here at all if it weren't for all the professors in the Political Science and Philosophy departments making me excited to learn and encouraging me to be the best student that I can be. All of you are a constant source of inspiration.

Introduction

To what extent are states with powerful militaries less likely to comply with the European Court of Human Rights (ECtHR) or the Inter-American Court of Human Rights (IACtHR) on their judgements? The courts were established with similar goals: to attempt to hold states accountable for human rights abuses and violations of international rights law. The states that are under the jurisdiction of these courts are expected to comply with their rulings and attempt to showcase actual change in their domestic policy; however, the question remains as to whether all of these states are complying as much as we, the international community, would like.

I argue that states with powerful militaries are less likely to comply with rulings made by the ECtHR and IACtHR concerning international human rights law. The underlying concepts behind this argument come from a mixture of the Realist and rational functionalist theories. These are the views that international relations is merely a struggle for power amongst the actors and that states will always maximize their own self-interest and the idea that cooperation occurs when states have similar interests and problems they must solve.¹ One of the critical issues behind most of the international institutions in place is that they do not have the “teeth” to enforce much of international law.² This issue connects with the idea of international human rights law, because states

¹ Jervis, Robert. “Realism, Neoliberalism, and Cooperation: Understanding the Debate.” *International Security* 24, no. 1 (1999): 42–63. <https://doi.org/10.1162/016228899560040>; Mearsheimer, John J. *The Tragedy of Great Power Politics*. New York: W.W. Norton, 2001; Waltz, Kenneth Neal. *Theory of International Politics*. Long Grove: Waveland Press, 1979.

² Komanovics, Adrienne. “Transition from Commitment to Compliance: The Efficacy of International Human Rights Tribunals.” *Anuario da Faculdade de Direito da Universidade da Coruña* 20 (2016). 321; Cassel, Douglass. “Does international human rights law make a difference.” *Chi. J. Int’l L.* 2 (2001).

who may get prosecuted by the ECtHR or IACtHR know that these institutions do not have the coercive power to enforce their rulings. By understanding that states will act in their own self-interest, it is feasible that a state may know that other states will be unable to enforce or sanction them for their human rights abuses.

The reason this research question must be answered is because of how the international human rights and compliance literature has developed over the years. Specifically, Hillebrecht has focused on the specific domestic institutions that encourage compliance with the ECtHR and IACtHR.³ On the other hand, the compliance literature is not unified with theories ranging from the Realist theory approach to the signaling theory approach, all with conflicting ideas of what may make a state comply or not comply with international treaties, tribunals, and courts. My research will expand upon both of these areas by focusing on a specific institution that may affect the actions a particular state takes when it comes to compliance and what the state may be able to get away with in international relations. By providing something tangible that may influence the actions of a state, further research could expand upon other ideas of what makes a state powerful. Examples of this include areas like a state's international trading power, or even case studies on certain nations who are deemed "powerful."

This research also has policy implications concerning how international courts and states interact with one another. By proving whether a state's military power has an impact on their compliance rate with the ECtHR or IACtHR the international community will be able to better understand why certain states will comply. This can lead to potential

³ Hillebrecht, Courtney. *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*. Cambridge: Cambridge University Press, 2013.

action by the courts or the states within the jurisdiction of these courts. The courts themselves could take action by providing easier to comply with rulings so that the compliance rate increases with these powerful states.

Literature Review

Compliance and non-compliance is still a growing area of the literature in IR. Much of the literature has focused on whether international institutions matter in terms of effectiveness, what may encourage a state to comply or not comply, and how international courts factor into these problems.⁴

Foundational Theories of International Relations

While my paper's foundation will be based upon Courtney Hillebrecht's book, *Domestic Politics and International Human Rights Tribunals*, an overview of the broad ideas in this field of research must first be discussed. Stephen Walt defines IR theory as a constant competition between the liberal, radical, and Realist theories.⁵ Liberalism looks to mitigate conflict between states, radical theory focuses on transforming the international institutional system, and Realism shows how conflict between states is undeniable and constant. Another important concept is the institutionalist theory

⁴ Alter, Karen J. "Delegation to International Courts and the Limits of Re-Contracting Political Power." *Delegation and Agency in International Organizations*, n.d., 312–38; Komanovics, Adrienne. "Transition from Commitment to Compliance: The Efficacy of International Human Rights Tribunals." *Anuario da Faculdade de Direito da Universidade da Coruña* 20 (2016). 321; Jo, Hyeran and Simmons, Beth A., "Can the International Criminal Court Deter Atrocity?" (2016). Faculty Scholarship. Paper 1686.

⁵ Walt, Stephen M. 1998. "International Relations: One World, Many Theories". *Foreign Policy*, no. 110: 29. doi:10.2307/1149275.

approach where cooperation is essential in IR because of our world of economic interdependence.⁶ All of these theories are important in IR, however, my paper will primarily utilize pieces of the Realist and institutionalist theories in explaining why states with powerful militaries will be less likely to comply with international court and tribunals' rulings and why these institutions are established and utilized in the first place, respectively.

An essential aspect of my theory will be based on the ideas of offensive and defensive Realism discussed by Robert Jervis.⁷ He discusses where neoliberal institutionalists and Realists disagree and argues that the disagreements have been misunderstood. This is based on the fact that neoliberals believe there is more room for potential cooperation than realism does. These theories also disagree on how much conflict in world politics is avoidable. He defines an offensive Realist as an individual who sees only a few important situations in international politics that resembles the prisoner's dilemma.⁸ On the other hand, defensive Realists are closer to neoliberals and take the stance that the prisoner's dilemma occurs more frequently through the security dilemma, which is when one state attempts to increase its security and has the effect of decreasing the security of other states.⁹ Defensive Realists are less optimistic than neoliberals because they have less faith in the ability of states to reach their common interests together. This ties into the idea that the fear and mistrust states feel towards

⁶ Keohane, Robert O. (Robert Owen), 1941-. *After Hegemony : Cooperation and Discord in the World Political Economy*. Princeton, N.J. :Princeton University Press, 1984.

⁷ Jervis, Robert. "Realism, Neoliberalism, and Cooperation: Understanding the Debate."

⁸ Ibid. 48.

⁹ Ibid. 49.

other states can be extremely difficult to overcome. Overall, a defensive Realist's opinion depends upon whether a state actor is facing a partner that is like-minded or facing an expansionist state actor.

Mearsheimer takes an offensive Realist approach by focusing on how all states strive to be a regional hegemon similar to that of the United States.¹⁰ He argues that states are in a constant power struggle to ensure that their state has the best chances of survival because of the lack of a centralized international government or enforcer. Mearsheimer cites the Cold War as a prime example of two states competing to have a significant advantage in power over the other.

Why International Courts are Created

With a discussion on why states comply with international human rights law and compliance towards international agreements overall, the obvious questions that follow are: 1) Why are these courts created in the first place? 2) How effective are international human rights tribunals in getting their desired result?

Why are these courts created in the first place? Kenneth Abbott and Duncan Snidal tackle the question of why states may act through formal international organizations (IOs) and cite how the centralization and independence of international organizations as the reason for why states utilize these organizations.¹¹ Centralization is something that makes the actions for the collective more efficient and independence is

¹⁰ Mearsheimer, John J. *The Tragedy of Great Power Politics*.

¹¹ Abbott, Kenneth W., and Duncan Snidal. "Why States Act through Formal International Organizations." *Journal of Conflict Resolution* 42, no. 1 (1998): 3–32.
<https://doi.org/10.1177/0022002798042001001>.

the autonomy required for an IO to be an independent, neutral actor in relations with other states.¹² The idea is for these IOs to work on problems that states may have issues solving on their own or collectively. For example, states may establish the ECtHR because it is easier for an autonomous, neutral actor to handle cases of human rights abuses compared to the states themselves. These sources are essential in the sense that it is important to understand why a state may wish to act through an institution like the ECtHR or IACtHR. My argument focuses on the idea of power from a Realist/defensive Realist perspective, meaning, these states establish these institutions as a way for them to further expand their own power through the guise of these institutions.

Darren Hawkins et al. utilize the principal-agent theory and the delegation of tasks to understand IOs and their relationships with states.¹³ The principal-agent theory is a common theory concerning two different actors, the principal and agent, where the agent takes actions that impact the principal. Delegation is a “grant of authority from a *principal* to an *agent* that empowers the latter to act on behalf of the former.”¹⁴ The benefits of delegating include: resolving disputes, enhancing credibility, managing policy externalities, creating policy bias, and facilitating collective decision-making.¹⁵ Hawkins et al. also caution against the problem of agency slack, which is when the agent is taking an action that is undesirable to the principal. By understanding the relationship a state has with international institutions allows for us to better understand why a state may delegate

¹² Ibid.

¹³ Hawkins, Darren, David A. Lake, Daniel L. Nielson, and Michael J. Tierney. “Delegation under Anarchy: States, International Organizations, and Principal-Agent Theory.” *Delegation and Agency in International Organizations*, n.d., 3–38.
<https://doi.org/10.1017/cbo9780511491368.002>.

¹⁴ Hawkins. “Delegation under anarchy.” 7.

¹⁵ Hawkins. “Delegation under anarchy.” 13.

the authority to act upon human rights abuses, for example. This ties in with my overall argument because the powerful states who found these institutions do not want to come across as domineering. By allowing an autonomous institution molded by their preferences they can heavily influence other state affairs safely.

However, Karen Alter takes a slightly separate approach from Hawkins et al. and mentions how there has been “a paradigm change in creating and using international courts” because of the seemingly large amount of autonomy that is being offered to new-style international courts.¹⁶ She argues that international courts are becoming more of a separate entity with more power when compared to other IOs and that the literature should reflect this idea. One of the biggest differences between old-style international courts and new-style courts is that new-style courts have compulsory jurisdiction.¹⁷ Compulsory jurisdiction is when a state *must* agree to be under a particular court’s jurisdiction. The ECtHR is an example of this. Those who wish to join the EU are under the ECtHR’s jurisdiction for all human rights legal matters. One of Alter’s strongest arguments highlights how international courts are not much different from their domestic counterparts when it comes to their coercive power. She argues that international courts attempt to change state policy by aiding actors inside and outside of the state that have the same objectives as what is being ruled into international law. Overall, the power of international courts seems to be growing with the passage of time and, according to Alter, states should be aware of this and be mindful of how much autonomy is being given to

¹⁶ Alter, Karen J. “Delegation to International Courts and the Limits of Re-Contracting Political Power.” *Delegation and Agency in International Organizations*, n.d., 312–38. <https://doi.org/10.1017/cbo9780511491368.012>.

¹⁷ Alter. “Delegation to International Courts.” 5.

these courts.¹⁸ As the courts become more powerful, one should expect their effectiveness to grow as well.

Adrienne Komanovics focuses on the “contemporary challenges the international human rights mechanisms are confronted with.”¹⁹ While international human rights institutions have come a long way, there are still many problems these institutions face when it comes to ensuring compliance of member states. Even the most sophisticated court, the ECtHR, has difficulty ensuring full compliance from member states because of the decentralized nature of the Court. Some of the challenges these institutions face, according to Komanovics, include among other things: availability of independent information, the quality of concluding observations, and a lack of follow-up procedures in enforcing recommendations. Independent information in the sense that member states may be unwilling to provide information that can be trusted. The quality of concluding observations is the idea of whether the ECtHR can believe or trust that the state has implemented their ruling effectively. A lack of follow-up procedures is the ability the court, the ECtHR in this case, has in being able to enforce their rulings or recommendations.

The most important section of Komanovic’s article discusses the weaknesses of the ECtHR, which include: the quality and consistency of the judgements, the judges themselves, the “character” of ECtHR judgements, the supervision of the execution of the Court’s judgements by the Committee of Ministers, issues of competence in the field of

¹⁸ Ibid.

¹⁹ Komanovics, Adrienne. "Transition from Commitment to Compliance: The Efficacy of International Human Rights Tribunals." *Anuario da Faculdade de Direito da Universidade da Coruña* 20 (2016). 321

enforcement, and the supervision process. One of the recommendations given by Komanovics is that, to enhance compliance, “technical support must be complemented with political measures, mainly in cases where violations are committed in the context of complex problems that call for political solutions and peaceful settlement.”²⁰

On the topic of the efficacy of international institutions, Douglass Cassel, Beth Simmons, and Jo Hyeran address these concerns in their articles.²¹ Cassel focuses on whether international human rights law makes an actual difference in the world, while Simmons and Hyeran tackle whether the International Criminal Court (ICC) can deter atrocity. Cassell argues that international human rights law is an exponential entity that builds upon itself over time, meaning, as time goes on and policies continue to be implemented all around the world, we see human rights law expand and become more powerful. Due to this mutual enforcement, international law has numerous roles, including: providing a common language for rights groups and the United Nations (UN), reinforcing the universality of human rights, legitimizing the claims of rights, signaling the will of the international community, providing juridical precision, creating the increased expectation of compliance, encouraging domestic judicial enforcement, encouraging enforcement by international courts and agencies, the creation of additional stigma, and the ability to avoid moral relativism. Cassel concludes that international

²⁰ Komanovics, Adrienne. "Transition from Commitment to Compliance." 348.

²¹ Jo Hyeran and Simmons, Beth A., "Can the International Criminal Court Deter Atrocity?" (2016). Faculty Scholarship. Paper 1686; Cassel, Douglass. "Does international human rights law make a difference." *Chi. J. Int'l L.* 2 (2001): 121.

human rights law's direct impact was weak and inconsistent; however, as time goes on we should see an increased effectiveness of these human rights policies and institutions.²²

On the other hand of the spectrum of effectiveness, Hyeran and Simmons argue in their article that the ICC is going to be more likely to deter actors who are subject to societal pressure.²³ They focus on two types of deterrence: prosecutorial deterrence and social deterrence. Prosecutorial deterrence is when there is an anticipated court-ordered punishment and social deterrence results from social costs that are extra-legal when one violates the law. The conclusions were that if a state had ratified the Rome Statutes the reduction in civilian killing was substantially decreased and that regime type did not matter when it comes to the amount of civilians killed in conflict. It was found that rebel groups are much harder to deter than a government. The final conclusion given was that, contrary to past literature, the ICC seems to have *some* type of positive effect on deterrence.²⁴

Compliance and How Domestic Institutions Impact State Compliance

In Andrew Cortell and James Davis' research, they generate the idea that Hillebrecht pulls on extensively in her book, where government officials and interest groups appeal to international rules and norms so that their own domestic interests can be furthered.²⁵ To study this hypothesis, the authors examine two U.S. policies, an economic

²² Cassel, "Does international human rights law." 135.

²³ Jo Hyeran and Simmons, Beth A., "Can the International Criminal Court Deter Atrocity?" (2016). Faculty Scholarship. Paper 1686.

²⁴ Jo, Simmons. "Compliance with international agreements." 36

²⁵ Cortell, Andrew P., and James W. Davis. "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms." *International Studies Quarterly* 40, no. 4 (1996).

policy and a military policy. Cortell and Davis then go on to create four structures that explain the different ways a state may choose to implement international rules and norms in their domestic policy.²⁶ Type one and three structures focus on how state officials are the primary way that international rules and norms can affect national policy. In type two and four structures, societal interest groups have much more power in the decision-making process of domestic policy. Both of the U.S. policies observed by the authors support the hypothesis and the structures created. In their conclusion, they come to find that the two factors that seem to decide whether a domestic actor's use of an international norm or rule will actually impact their state's policies: the structural context of the debate and the domestic salience of the issue at hand.²⁷

Following this, Harold Koh discussed a specifically American approach by highlighting the history of international law being used within the American court system.²⁸ Koh specifically mentions how "the early Supreme Court saw the judicial branch as a central channel for making international law part of U.S. law."²⁹ Koh's paper is significant because if we understand how international law can be implemented into our own domestic policies, we can further understand the combination of the domestic goals of political leaders and interest groups in compliance with international norms and laws. These ideas can be applied to the Realist theory approach as well considering how the goals of political leaders and interest groups must be applied in the decisions these

²⁶ Ibid.

²⁷ Ibid.

²⁸ Koh, Harold Hongju. "International Law as Part of Our Law." *The American Journal of International Law* 98, no. 1 (2004).

²⁹ Koh, "International Law As Part. 44.

states make in compliance. This means that the interests of the state are being put first through a cost-benefit analysis. States will pick and choose rulings that they wish to put into their domestic law. By understanding that some political leaders may wish to take their country in a particular direction we can also understand why some states may opt for noncompliance with ECtHR or IACtHR rulings. The idea behind this is that political leaders may utilize international law as “cover” to advance their domestic wishes.

Beth Simmons gives a strong review of the foundations of compliance with international agreements.³⁰ The foundations and review within this paper are extremely important to the area of compliance. She specifically discusses Realist theory, rational functionalism, domestic regime-based explanations, and normative approaches. These theories are considered the core ideas in how researchers approach international compliance. Realists, according to Simmons, focus on power and tend to be “highly skeptical that treaties or formal agreements influence state action in any important way.”

³¹ One of the strongest arguments that come from Realists is the idea that the decentralized nature of the international legal system is its biggest weakness. By not having coercive powers, international institutions have to rely on states being willing to concede their power, which is unlikely according to Realists. Another important theory she prioritizes is the rational functionalist theory, which is the idea that international agreements attempt to address particular needs. This stems from the fact that states wish to solve common problems that they may have difficulties solving on their own, i.e.

³⁰ Simmons, Beth A. "Compliance with international agreements." *Annual Review of Political Science* 1, no. 1

³¹ Simmons, "Compliance with international agreements." 5.

climate change. This is important to understand for this particular paper because the rational functionalist theory approach is essential for the establishment of international courts and tribunals.

Another idea that must be discussed in the area of international human rights and compliance is signaling theory. Signaling theory is an idea presented by David Moore where he discusses how states will signal to other states their willingness to cooperate and incur the costs of abiding by international human rights law.³² The importance stems from the fact that “incurring the costs of human rights compliance demonstrates that a state is able and willing to restrain the reach and exercise of its power in the near term.”³³ If a state wishes to create a strong relationship with other powerful states then it may be worth the cost to signal their commitment to upholding international human rights laws domestically.

Moore’s ideas relate fairly closely to Hillebrecht’s ideas, where she discusses how domestic institutions are the primary variable to observe when figuring out the likelihood of a state’s compliance with the ECtHR and IACtHR.³⁴ Hillebrecht argues that domestic institutions like the strength of the executive branch, civil society actors, an independent judiciary, and pro-compliance partnerships can facilitate compliance with human rights tribunals’ rulings. Another important facet of her discussion is how there are four different types of variation in how states can comply with international human rights

³² Moore, David H. "A signaling theory of human rights compliance." *Nw. UL Rev.* 97 (2002)

³³ Moore, “A signaling theory of human rights compliance.” 884.

³⁴ Hillebrecht, Courtney. *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*. Cambridge: Cambridge University Press, 2013.

institutions: variations between tribunals, variations within rulings, variations between countries, and variations within countries.

In chapter two of her book, Hillebrecht highlights three causal mechanisms of compliance: 1) governments can utilize the idea of compliance to demonstrate a commitment to human rights (signaling theory), 2) tribunal rulings can provide political legitimacy for domestic actors who strive to advance human rights agendas domestically, and 3) some liberal democracies engage in “begrudging compliance.”³⁵ Hillebrecht then goes on to test the relationship between the strength of the domestic institutions and the level/likelihood of compliance. The conclusion is that the stronger the domestic institutions are, the more likely a government will comply with human rights tribunals’ rulings. I will not be expanding on these mechanisms of compliance presented by Hillebrecht. Instead, I will be mixing these ideas of compliance with the military power of a state.

Anagnostou and Mungiu-Pippidi expand on where Hillebrecht left off by studying why government officials in some states adopt a more responsive attitude in implementing international court judgements, in contrast to states that procrastinate or are reluctant to listen to court rulings.³⁶ The main argument presented in their research is how a state’s reluctance to comply with rulings will more often than not take the form of procrastination or even neglectful behavior on the part of national authorities. This argument was studied by looking at how many adverse judgements are given to a

³⁵ Hillebrecht, *Domestic Politics and International Human Rights Tribunals*. 21.

³⁶ Anagnostou, D., and A. Mungiu-Pippidi. "Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter." *European Journal of International Law* 25, no. 1 (2014).

particular state as well as how long the state takes to comply with the ECtHR's ruling.

Anagnostou and Mungiu-Pippidi conclude that successful implementation of Strasbourg Court rulings seems to be closely linked to domestic implementation structures that are 1) equipped with the legal capacity and political strength to impact law-making and policy progress in the direction of human rights-compliant measures and reforms, and 2) embedded with strong human rights awareness, policy-making power, review, and the administrative infrastructure to enforce these new policies.

International Courts and Noncompliance

A key area of the literature that has yet to be discussed is international courts and how noncompliance may interact with them. Stone Sweet and Brunell took an approach centered around analyzing claims made by Carruba, Gabel, and Hankla (CGH) concerning the European Court of Justice (ECJ) and how the threat of override by member states constrains the ECJ's actions.³⁷ The main hypotheses looked at by CGH were: 1) "The more credible the threat of override... the more likely the court is to rule in favor of the governments' favored position" and 2) "The more opposition a litigant government has from other MSGs [Member State Governments], the more likely the court is to rule against that litigant government."³⁸ Stone Sweet and Brunell conclude that the original conclusions made by CGH are not supported by their own data. The threat of

³⁷ Stone Sweet, Alec, and Thomas Brunell. 2012. "The European Court Of Justice, State Noncompliance, And The Politics Of Override." *American Political Science Review* 106 (1): 204-213.

³⁸ Carrubba, Clifford J., Matthew Gabel, and Charles Hankla. 2008. "Judicial Behavior Under Political Constraints: Evidence From The European Court Of Justice." *American Political Science Review* 102 (4): 435-452. 439.

an override is not credible enough to constrain the ECJ considering how there was not one successful override in the CGH dataset. This happens because “unanimity is the decision rule governing override in more than 90% of the cases in which MSGs filed briefs in the CGH dataset”.³⁹ When a member state did attempt to prevent controversial ECJ rulings they always ended up failing.

Military Power and its Impact on International Relations

Indra de Soysa et al. argue that power-transition theory is correct, and effective, for finding out how likely peace will be upheld in IR.⁴⁰ They utilize the same Correlates of War (COW) dataset that I am using to analyze their argument. In the end, they do find support for their argument that war was most likely to occur between two states of equal power, however, their results were weaker than past research had been. Overall, this article is important because of its use of the same dataset I am using for my research and its Realist-type conclusions of how important military power is when it comes to state relations.

Robert Art follows Soysa et al. 's lead by highlighting the importance of military power in IR.⁴¹ However, Art's most important arguments come from his section on what the future of military force and power entails. He argues that “military power will remain central to the course of international relations... Those states that field powerful military

³⁹ Sweet, Alec, and Thomas Brunell. “The European Court of Justice.” 205.

⁴⁰ Soysa, Indra De, John R. Oneal, and Yong-Hee Park. “Testing Power-Transition Theory Using Alternative Measures of National Capabilities.” *Journal of Conflict Resolution* 41, no. 4 (1997): 509–28. <https://doi.org/10.1177/0022002797041004002>.

⁴¹ Art, Robert J. “To What Ends Military Power?” *International Security* 4, no. 4 (1980): 3. <https://doi.org/10.2307/2626666>.

forces will find themselves in greater control...’’⁴² Art is quick to point out that military power cannot solve all of the problems in IR, however, it *is* fundamentally essential in how states will interact with one another.

Both of these articles point out things that are fundamental to my own argument: 1) that military power is essential to how states interact with one another and 2) military power dictates how the states themselves may act on their own. With this in mind, I think it is important to use the National Material Capabilities Dataset to understand the relative power of the states in my paper. Specifically, the states under the jurisdiction of the ECtHR and IACtHR.

Defensive Realism With International Human Rights Tribunals:

With all of these ideas concerning why states comply and what makes international human rights law important, one thing remains clear: there is a lack of clear answers as to what exactly can encourage a state to comply with the ECtHR or IACtHR. We understand that domestic institutions are valuable when seeing the likelihood of whether a state will comply. What I mean by valuable is that these institutions get some type of positive results, according to the literature.

However, it is important to distinguish that it is not always the institutions themselves getting results, it is the power of the states who establish these institutions. International institutions are a way for states to push their preferred norms and rules onto the international community, especially when dealing with weaker states. Signaling

⁴² Art. “To What Ends Military Power?” 27.

theory obviously has its merits because of increased globalization and the need for cooperation with powerful states. However, what about more direct institutions such as the military or economic might? These institutions have direct bearing upon state decision making when it comes to interactions with other states and what a state can do on the international stage. If a state feels powerful enough to take particular actions because of these institutions, it logically follows that a state may feel emboldened enough to show noncompliance with tribunal rulings. This lends itself into defensive Realism, where these institutions are not as strong as institutionalists may believe; however, these institutions still have a degree of impact upon international relations. With this idea in mind, it is obvious the next step in the literature should be case studies and research on what differentiates powerful states and their levels of compliance with less powerful states and their levels of compliance. This paper will focus on the aspect of powerful states and their military might in an attempt to fill some of the holes in the current scholarship.

Theory

I argue that states with powerful militaries are less likely to comply with rulings made by the ECtHR and the IACtHR concerning international human rights law. This coincides with the Realist theory approach to IR, where the focus is on the struggle for power amongst states. A key difference in how I use the Realist theory approach is how I take from Jarvis' ideas about defensive Realism and argue that these institutions can be useful under a Realist approach and why a

state would allow themselves to be placed under these court's jurisdiction in the first place.

Realists typically argue that these institutions are not as impactful as institutionalists suggest and that these institutions are fairly useless when it comes to outcomes in IR. I agree with some pieces of this argument and disagree with others. First, I disagree that all institutions are useless and not impactful at all. Second, I argue that these institutions seem to be vehicles for the creator states in the sense that they are performing the very actions that these states intend them to do. The institutions themselves do not matter but the power of the states who establish these institutions do. For example, the ECtHR is considered an extremely effective international court with high compliance rates. It seems to be solving some problems and providing solutions to international concerns. However, it is, at its foundation, created by these powerful states to do the things that they want it to do so that their state does not come off as a state that interferes with other state's sovereignty. I see these institutions as entities that exist as a way for creator states to subtly interfere and establish norms and rules that benefit them in the international community. This is where the ideas of rational functionalism and defensive Realism begin to merge. From this idea, we can see states giving some short term power up for long term power, which is not something many hardline Realists argue.

States join these international institutions to accomplish their own goals. This can range from things like: establishing credibility as a state by buying into

the community's rules and norms through these institutions, being a founder of these institutions to further establish and push their own state's ideology, or even to establish better relationships with particular states that are also a part of an institution, which is especially important when the state is attempting to form a better relationship with a more powerful state. All of these things are examples of why a state may give up some of their sovereignty to join a court like the ECtHR or IACtHR. They have some type of ulterior motive that they wish to accomplish. So the question of why a state would sign onto the ECtHR's compulsory jurisdiction is answered merely by saying that a state feels like it is worth their while, so to speak, to join the court and relinquish some of their sovereignty. However, this idea of relinquishing sovereignty does not quite apply in the same way for all states. States, after all, are always seeking to push their own advantages in international relations.

States are in a constant power struggle, so if the state has a powerful enough military to feel "comfortable" breaking international human rights law then it follows that the state will be less likely to comply with ECtHR or IACtHR rulings. What is meant by "comfortable" is that we see states who take actions, such as the U.S. and China, that objectively break international human rights law but have strong enough militaries to escape punishment. An example of this in today's world is China's implementation of 're-education camps' for Uighur Muslims. The goal is to follow up on this idea and see if states with comparatively

strong militaries compared to the other states in their jurisdiction are more likely to not comply with ECtHR or IACtHR rulings.

Without the ability to enforce their rulings, the courts must rely on states to implement their judgements independently. Unless other states sanction the accused state enough to where they may abide by the judgments, however, this is fairly rare in international relations. This coincides with my previous discussion on why states will sign onto these institutions. A significant reason for this is that the states know they may utilize noncompliance to shirk their responsibilities, especially if they feel less of an obligation to the other states because of their power. In this case, military power is the deciding factor. My hypothesis is as follows:

H1: If a state has a powerful military in relation to the other states under a particular court's jurisdiction, then we can expect the state to be less likely to comply with international courts' and tribunals' rulings on international human rights law.

I expect to find that states with more powerful militaries will be less likely to comply with the rulings made by the ECtHR and IACtHR. This stems from the fact that the state may not feel the need to utilize signaling theory because their "costs" for other states to cooperate with them are low considering their military might. The reason a state may not comply with the ECtHR or IACtHR is because of the idea of autonomy and holding power within their country. As Hillebrecht notes, many states have to give up some of their autonomy to comply with international human rights tribunals' rulings and

judgements to signal their willingness to uphold common human rights laws.⁴³ For some states, this signaling may be ignorable considering their military strength. It is also important to recognize that states will be less inclined to sanction or actively go against a state with a military that is significantly more powerful than their own.

Research Design

The population of my study will be all of the states that are under the ECtHR and IACtHR's jurisdiction. The ECtHR has 47 member states under their jurisdiction and the IACtHR has 23. This is a total of 70 states that I will be observing. The data I observe starts from 1996 up to 2008. This means that all of the cases decided by the ECtHR and IACtHR are observed between these dates in my data.

To answer the question, I will use a quantitative analysis and judge whether the states with comparatively powerful militaries in their jurisdiction are less likely to comply with ECtHR or IACtHR rulings. To get the specific data, I will employ Hillebrecht's model, adding a variable for military power. I use the Compliance with Human Rights Tribunals (CHRT) Dataset, as well as the National Military Capabilities (NMC) Dataset.⁴⁴ This will be done by joining the two datasets and running a logistic regression analysis. The goal is to see whether there is a strong correlation between militarily strong states and states that are less likely to comply with ECtHR and IACtHR

⁴³ Hillebrecht, *Domestic Politics and International Human Rights Tribunals*.

⁴⁴ Hillebrecht, Courtney. *Domestic Politics and International Human Rights Tribunals*; Michael Greig and Andrew Enterline, *National Material Capabilities*, v5.0 (February 1 2017), distributed by The Correlates of War Project, <http://www.correlatesofwar.org/data-sets/national-material-capabilities>.

rulings. I use a logit model because my dependent variable *complied*, taken from the CHRT dataset, is dichotomous, which means is either 1, the state complied, or 0, the state did not comply.

My dependent variable, compliance, is measured as: 1) paying reparations, 2) holding perpetrators accountable and reopening domestic trials, 3) providing symbolic restitution by honoring victims and acknowledging the state's mistakes, 4) taking individual measures in an attempt to remedy the problems the victims faced, and 5) changing laws and practices to ensure future violations of human rights law do not happen. I will only use the control variables that Hillebrecht found to be significant, which are level of executive restraint, physical integrity violations, and GDP per capita. The central independent variable of interest is how powerful or "strong" a state's military is. I take this measure from the NMC dataset. Power, according to the NMC dataset, is the ability of a nation to exercise and resist influence from other states.⁴⁵ To analyze the potential power of a state, the NMC dataset tracks six indicators of said power: 1) military expenditure, 2) military personnel, 3) energy consumption, 4) iron and steel production, 5) urban population, and 6) total population. I will be primarily focusing on the military personnel, military expenditure, and the total score the state receives from the NMC dataset concerning its power for my study.

Both of these datasets are needed for the following reasons: The NMC is useful for defining what a powerful military is and the CHRT is useful for Hillebrecht's ideas of what compliance is as well as her using the same human rights courts as this paper, which

⁴⁵ Michael Greig and Andrew Enterline, *National Material Capabilities*, v5.0. 2.

means the same states are being used. Hillebrecht's model fixed many of the issues the human rights courts faced, namely endogeneity and over aggregation, by focusing on states' completion of concrete obligations. With this method, compliance becomes much easier to observe and measure as well as fixing the problems listed before. Because of the effectiveness of her dataset, using her data will be most beneficial when it comes to seeing whether a state has complied with the various measures and judgements given by the ECtHR or IACtHR.

Results

I find that my hypothesis, that states with militarily powerful states are less likely to comply with ECtHR and IACtHR rulings, does not find support. Instead, the opposite answer is found--the stronger states are *more* likely to comply with ECtHR and IACtHR rulings and judgements. Tables 1, 2, and 3 are results found from the logistic regression model.

Table 1. Logistic Regression, military personnel

	Coef.
Military Personnel	0.00*** (0.00)
Military Expenditure	---
Cinc (total power score)	---
Cxconst (executive restraints)	0.09** (0.04)
GDP per capita	0.00 (0.00)
Physical Integrity	0.14*** (0.03)
_const	-1.54*** (0.32)

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⁴⁶ ** = $p < 0.05$, *** = $p < 0.01$

Table 2. Logistic Regression, military expenditure

	Coef.
Military Personnel	---
Military Expenditure	0.00** (0.00)
Cinc (total power score)	---
Cxconst (executive restraints)	.072 (0.04)
GDP Per Capita	0.00 (0.00)
Physical Integrity	0.08*** (0.02)
_const	-1.09*** (0.27)

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⁴⁷ ** = $p < 0.05$, *** = $p < 0.01$

Table 3. Logistic Regression, total “power” score, i.e., cinc

	Coef.
Military Personnel	---
Military Expenditure	---
Cinc (total power score)	11.5** (4.35)
Cxconst (executive restraints)	0.09** (0.04)
GDP Per Capita	0.00 (0.00)
Physical Integrity	0.10*** (0.02)
_const	-1.40*** (0.32)

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According to Tables 1, 2, and 3, all three variables, *milper*, *milex*, and *cinc*, are statistically significant. This means that states with a greater number of military

⁴⁸ ** = p<0.05, *** = p<0.01

personnel, greater military expenditure, and greater overall power score have a higher probability of complying with ECtHR and IACtHR rulings.

Analysis

Overall, my hypothesis does not find support. I originally argued that states with comparatively more powerful militaries would be less likely to comply with ECtHR and IACtHR rulings passed down on them. However, according to my results, this does not seem to be the case and is not supported by the data. Instead, I find that it is probable that states with a higher number of military personnel, greater military expenditures, and even states who are listed with a higher military power score as a whole, are *more* likely to comply with rulings passed down upon them by the ECtHR and IACtHR. These findings are fairly significant for numerous reasons and could be understood in numerous ways.

The findings are significant in the sense that this could, theoretically, deal a blow to the Realist theory approach to international relations. If states who are militarily more powerful are *more* likely to comply, then it may seem like the case that Realists could be wrong about their assumptions that these states would not have to follow these international institutions. It could also be argued that these findings further support Hillebrecht's conclusion that domestic institutions are the linchpin to whether a state is more or less likely to comply. This is seen in Table 4, where it is significantly probable that states with larger militaries are more likely to comply. We can make this conclusion because of the possibility that states with a higher number of military personnel are more

likely to have higher populations as a whole, meaning the population of the state would be more likely to be paying attention, and observing, the states actions and would urge the state to comply with these rulings through their domestic institutions. Naturally, this lends itself to Hillebrecht's findings whether states with stronger domestic institutions are more likely to comply.

Furthermore, we could potentially argue through my theory that these militarily powerful states were the ones who created the ECtHR and IACtHR in the first place, leading them to be more likely to comply than states who are weaker. Through this compliance, they can lead the way, per se, to encourage other states to abide by these rules set by the courts. As I state in my theory, states establish these institutions to further their own goals and ambitions. One could argue that militarily weaker states following the lead of the more powerful states can lead to the powerful state's geopolitical goals being more likely to be accomplished through this compliance with international courts. However, this would require further research beyond the scope of this study.

Not only is this study significant because of its findings and relation to the Realist theory approach, this research opens the door to further research in the future. One could look at economic power, rather than military, as a reason for whether a state is more or less likely to comply. Not only may economic or military power be interesting, future research could also look at whether having powerful allies is an indicator of whether or not a state is likely to comply. Case studies comparing militarily powerful states, such as France or the UK, and militarily weaker states, such as Latvia or Iceland, and their compliance rates would also be useful for a more nuanced look at how military power

and compliance may interact. There is also the potential that further studies could observe different regions in the world while looking at military power and compliance under different institutions.

Another significant attribute of this research includes potential policy implications of my results for states. If states now know that their more powerful neighbors are more likely to comply, then does that mean that they will now be more likely to follow the leader and comply with these more powerful states so as to state on the good side of these more powerful states? Or could it mean that these weaker states see that these institutions already naturally favor the creator states and that they may be less inclined to comply in a seemingly rigged system? I am more inclined to say that these states would be more likely to follow the leader and comply as long as these institutions do not overstep their boundaries.

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Tables

Table 1. Logistic Regression, military personnel

	Coef.
Military Personnel	0.00*** (0.00)
Military Expenditure	---
Cinc (total power score)	---
Cxconst (executive restraints)	0.09** (0.04)
GDP per capita	0.00 (0.00)
Physical Integrity	0.14*** (0.03)
_const	-1.54*** (0.32)

Table 2. Logistic Regression, military expenditure

	Coef.
Military Personnel	---
Military Expenditure	0.00** (0.00)
Cinc (total power score)	---
Cxont (executive restraints)	.072 (0.04)
GDP Per Capita	0.00 (0.00)
Physical Integrity	0.08*** (0.02)
_const	-1.09*** (0.27)

Table 3. Logistic Regression, total “power” score, i.e., cinc

	Coef.
Military Personnel	---
Military Expenditure	---
Cinc (total power score)	11.5** (4.35)
Cxconst (executive restraints)	0.09** (0.04)
GDP Per Capita	0.00 (0.00)
Physical Integrity	0.10*** (0.02)
_const	-1.40*** (0.32)

